IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 471 OF 2006
AND
CIVIL APPLICATION NO. 472 OF 2006
AND
CIVIL APPLICATION NO. 473 OF 2006
IN
FIRST APPEAL (St.) No. 29357 OF 2005

WITH
CIVIL APPLICATION NO. 575 OF 2006
AND
CIVIL APPLICATION NO. 576 OF 2006
AND
CIVIL APPLICATION NO. 577 OF 2006
IN
FIRST APPEAL (St.) No. 29539 OF 2005

WITH
CIVIL APPLICATION No. 581 OF 2006
AND
CIVIL APPLICATION No. 582 OF 2006
AND
CIVIL APPLICATION No. 583 OF 2006
IN
FIRST APPEAL (St.) No. 29525 OF 2005

WITH
CIVIL APPLICATION No. 584 OF 2006
AND
CIVIL APPLICATION No. 585 OF 2006
AND
CIVIL APPLICATION No. 586 OF 2006
IN
FIRST APPEAL (St.) No. 29515 OF 2005

WITH
CIVIL APPLICATION No. 587 OF 2006
AND
CIVIL APPLICATION No. 588 OF 2006
AND
CIVIL APPLICATION No. 589 OF 2006
IN

FIRST APPEAL (St.) No. 29344 OF 2005

WITH
CIVIL APPLICATION NO. 6166 OF 2005
AND
CIVIL APPLICATION NO. 6167 OF 2005
AND
CIVIL APPLICATION NO. 6168 OF 2005
IN
FIRST APPEAL (St.) No. 29350 OF 2005

AND

FIRST APPEAL (St.) No. 29357 OF 2005

FIRST APPEAL (St.) No. 29539 OF 2005

FIRST APPEAL (St.) No. 29532 OF 2005

FIRST APPEAL (St.) No. 29525 OF 2005

FIRST APPEAL (St.) No. 29515 OF 2005

MAHARASHTRA KRINSHNA VALLEY DEVELOPMENT CORPORATION — APPLICANT / APPELLANT

VS.

THE STATE OF MAHARASHTRA AND ANR. — RESPONDENTS

Mr. U. B. Nighot, APP for the applicant Nos. 1 and 2.
Ms. G. P. Mulekar, AGP for the respondent Nos. 1 and 2.
Mr. Amit Gor i/b. Piyush Shah, advocate for respondent No.3

CORAM : J.N. Patel AND A.A. Sayed, J.J.

DATE: 12th June 2007.

P.C. (A.A.Sayed J.) :

1. Heard.

2. For reasons stated in the Civil Applications the delay in filing Appeals is condoned.

3. The Civil Applications for Leave to file Appeals are allowed and the Appeals are admitted. Office to register the Appeals. By consent of the parties the Appeals are taken up for final hearing and are being disposed of by a common order.

4. The above Appeals have been filed by the Appellants viz. Maharashtra Krishna Valley Development Corporation (MKVDC for short), the acquiring body, for the benefit of whom, the subject matter of lands were acquired by the State Government under the provisions of the Land Acquisition Act 1894, (hereinafter referred to as "the said Act") for rehabilitation of Project Affected Persons of Chaskaman Project at Village Koregaon Bhima, Taluka Shirur, District Pune. After the declarations were made under sec 6 of the said Act, the Sub Divisional Officer, Maval Sub Division, initiated proceedings for determining the amount payable as compensation to the claimants and passed the Awards. Being

dissatisfied with the quantum of compensation, the claimants sought reference to the Reference Court for enhancement of the compensation amount under sec 18 of the said Act.

5. Being aggrieved by the impugned orders and judgments passed by the 11th Ad Hoc Add'l District Judge, Pune, in the Land Reference, enhancing the compensation, the Appellants have filed the above First Appeals on the ground that the Reference Court has erred in enhancing the compensation without giving them an opportunity of hearing to them. According to the Appellants, they were not served with the notice and/or summons nor were they made party opponent in the Reference Court.

6. We have heard the learned Counsel for the parties. The short question which arises for our consideration is whether the impugned orders passed by the Reference Court can be allowed to be sutained in view of non-joinder of the acquiring body viz. MKVDC in the reference proceedings.

7. The provisions which are relevant for the above question are contained in Section 50 of the Land Acquisition Act, 1894 and is reproduced hereunder :

> "50. *Acquisition of land at cost of a local authority or Company*. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.
>
> (2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:
> Provided that no such local authority or Company shall be entitled to demand a reference under Section 18."

8. This question of impleadment of the acquiring body in the Reference Court is no longer res integra and are a settled law by a catena of judgments of the Apex Court as well as this Court. The Constitution Bench of the Hon'ble Supreme Court

in the case of U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (dead) by LRs and Ors (1995) 2 SCC 326, has held that Section 50(2) of the Land Acquisition Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation. The object underlying the aforesaid provision appears to be to safeguard the interests of the local authority which would be required to pay the amount of compensation that would be determined by the Collector or by the reference Court by enabling it to adduce evidence having a bearing on the amount of compensation before the Collector or the court and thereby assist them in making a fair determination. Such protection was necessary because in the matter of acquisition under the Land Acquisition Act a local authority for whom the land is acquired does not stand on the same footing as the Government. The Hon'ble Supreme Court further held that the local authority was a proper party in the proceedings and therefore entitled to be impleaded as a party in the proceedings before the reference

court and the orders of the Allahabad High Court were set aside.

9. Relying upon the above constitutional bench decision, the Hon'ble Supreme Court in the case of Abdul Rasak vs. Kerala Water Authority AIR 2002 SC 817, held that "the High Court has not erred in taking the view which it has taken and directing the reference cases to be remitted to the Civil Court consistently with the law laid down by the Constitution Bench, as K.W.A shall have to be impleaded as party to the proceedings before Civil Court from very beginning a retrial becomes unavoidable".

10. The above principles of law has been reiterated in **NTPC Ltd. Vs. State of Bihar & Ors** (2004) 12 SCC 96 wherein, the Hon'ble Supreme Court has laid down that the body on whose behalf the land is acquired is not just a necessary party but is also a proper party before the Reference Court. This Court in the cases of MSEB, Jalgaon Vs. Pralhadsa Lahanusa Kahstriya & Anr. 2004 (1) Mah LJ 649, and Bharat Sanchar Nigam Ltd. Vs. Bhayyasaheb Bhauraoji

Deshmukh 2005 (1) Mah LJ 471 has also followed the principles laid down by the Apex Court and has remanded the matter to the Reference Court for fresh determination after impleading the body for which acquisition was made.

11. It is not disputed that in the present case, no notice under sub-section (2) of Section 50 of the said Act was served on the acquiring body viz: MKVDC, by the Special Land Acquisition Officer. It is further not in dispute that MKVDC has not been impleaded as party in the Reference Court.

12. Following the law laid down by the Apex Court in the abovementioned cases, we allow all the above Appeals hold that the Appellants, who are the acquiring body in the present case are necessary and proper parties to the reference proceedings and the impugned orders and judgments of the Reference Court stand vitiated and we accordingly quash and set aside the same and remand the references to the Judge taking reference matters, for a fresh trial.

13. We also deem it fit to issue the following directions:

i) Parties to appear before the Reference Court on 14th September 2007 on which day the Appellants shall present their Applications to be joined as party Defendant to the Reference proceedings. The Reference Court shall allow the said Applications and the claimants shall carry out the necessary Amendment joining the Appellants as party Defendant on the same day on a formal order being passed by the Reference Court on the said Application.

II) The Reference Court shall proceed and dispose of the reference cases as expeditiously as possible and in any event before 30th April 2008 without being influenced by the impugned orders, which have been quashed and set aside.

III) The Appellants shall not be entitled to separate notices of the proceedings and shall be deemed to have waived service thereof;

IV) The statement of witnesses already recorded on behalf of the claimants need not be recorded afresh.

V) The Appellants shall be allowed an opportunity of

cross-examining the witnesses which have already been examined. However, such witnesses as are not available, and, therefore cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in evidence;

VI) The claimants may adduce such other evidence as they may propose to do and both the Appellants as well as State Govt. shall have the liberty to cross-examine such witnesses who are now examined by the claimants;

VII) The Appellants shall have the liberty of adducing such evidence as it may propose to do;

VIII) The amounts paid already to the claimants shall not be recalled, but be adjusted in the amount which may be fixed by the Reference Court after the fresh trial. The claimants however shall give necessary security of the enhanced compensation to the satisfaction of the Reference Court in the event the enhanced compensation is already paid to the claimants. On failure to do so, it will be open for the reference Court to take appropriate steps to recover the enhanced amount from the respective parties, through the Collector under the Maharashtra Land Revenue Code.

On recovery of the amount as aforesaid, the same shall be deposited in a term deposit in a suitable nationalized bank after seeking views of the parties.

IX) Registrar Judicial to communicate this order to the Judge taking reference matters, alongwith R & P, if any, after the Appeals are registered, expeditiously.

14. All Appeals stand disposed of accordingly with no order as to costs. All pending Civil Applications also stand disposed of.

Sd/-
(J.N. Patel J.)

Sd/-
(A.A. Sayed J.)